

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

In Re: ) **Case No. 23-90001-elm-11**  
)  
TUESDAY MORNING ) Fort Worth, Texas  
CORPORATION, et al., ) April 25, 2023  
) 9:00 a.m. Docket  
Debtors. )  
) INVICTUS GLOBAL MANAGEMENT,  
) LLC'S PRELIMINARY RESPONSE TO  
) DEBTORS' EMERGENCY MOTION FOR  
) ENTRY OF AN ORDER (936)  
) *(Continued from 04/24/2023)*

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD L. MORRIS,  
UNITED STATES BANKRUPTCY JUDGE.

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1           FORT WORTH, TEXAS - APRIL 25, 2023 - 9:01 A.M.

2           THE COURT: Please be seated. All right. Good  
3 morning, everybody. We're on the April 25, 2023 9:00 a.m.  
4 docket. We have the Tuesday Morning Corporation and  
5 affiliated cases, jointly administered under Case 23-90001.  
6 Let me pull up my screen here real quick. All right. And  
7 while that's coming up, let me tell you all who I have as far  
8 as electronic appearances today, in no particular order.

9           We have Mr. Mintz, Mr. Schodek, Mr. Koff, and Ms. Curran  
10 on behalf of Invictus Global Management.

11          We have Mr. Simon on behalf of the 1903 Parties.

12          We have Mr. Monsour and Mr. Kaplan on behalf of the  
13 Official Unsecured Creditors' Committee.

14          We have Mr. Riedel and Mr. Mather on behalf of the TASCRC  
15 Parties.

16          And we have Ms. Schmidt on behalf of the United States  
17 Trustee.

18          So let me go ahead and take additional appearances at this  
19 time, starting with folks in the courtroom.

20          MR. PROSTOK: Good morning, Your Honor. Jeff  
21 Prostok; Forshey Prostok; for Invictus.

22          THE COURT: All right. Mr. Prostok.

23          MR. LIPPMAN: Good morning, Your Honor. Kevin  
24 Lippman with Munsch Hardt Kopf & Harr appearing on behalf of  
25 the Debtors.

1 THE COURT: All right. Mr. Lippman.

2 And do we have folks on WebEx wishing to make a live  
3 appearance? I see we have Mr. Phelan.

4 MR. PHELAN: Robin Phelan for the Debtors.

5 THE COURT: Okay. Mr. Stohner?

6 MR. STOHNER: Yes, Your Honor. Ken Stohner of  
7 Jackson Walker on behalf of the Term Loan Lenders.

8 THE COURT: All right. I see Mr. Ellis.

9 MR. ELLIS: Good morning. Justin Ellis, MoloLamken,  
10 for Invictus.

11 THE COURT: All right. Very good. And I see Mr.  
12 Marshall.

13 MR. MARSHALL: Yes. Good morning, Your Honor.  
14 Jonathan Marshall of Choate, Hall & Stewart on behalf of Wells  
15 Fargo Bank as Prepetition ABL Agent.

16 THE COURT: Okay. Very good.

17 All right. Any other appearances on WebEx?

18 All right. Well, I see I've got Mr. Prostok and Mr.  
19 Lippman up at the lectern here together, which bodes well, I'm  
20 thinking, for today's proceedings. So let me turn it over to  
21 you all. Hopefully you won't arm-wrestle to compete on who is  
22 going to talk first. But tell me where we're at.

23 MR. LIPPMAN: Your Honor, I think we are in a good  
24 position today. The parties used the time last night, and  
25 more importantly, this morning, to come to an agreement to

1 announce to the Court on how to address the matter before the  
2 Court. And if I may, I'll just briefly tell the Court what it  
3 is.

4 THE COURT: Okay. Great.

5 MR. LIPPMAN: With respect to the borrowing request  
6 that the Debtor had made in the approximate amount of \$9.9  
7 million -- it's what's reflected on our Debtor's Exhibit H --  
8 the Debtors have agreed to pull out the request for  
9 approximately \$2.5 million. It's the occupancy cost amount.  
10 What that will do is drop the request to \$7,498,573.59.  
11 Invictus has agreed to fund that tomorrow morning via wire.  
12 The Debtors have agreed that those dollars that have -- are  
13 being advanced under -- to the Debtors under this 1903 DIP  
14 will be paid at closing, excluding any fees, costs, or  
15 expenses, and as to that all rights are being reserved. But  
16 the important thing is the dollars that are actually being  
17 advanced or remain -- have -- previously advanced to the  
18 extent there's a balance, all get paid at closing as a closing  
19 expense.

20 THE COURT: Okay. Mr. Prostok?

21 MR. PROSTOK: Yes, Your Honor. And the other  
22 condition that I think is agreed to is that there'll be no  
23 objection to the immediate repayment by either the Debtor or  
24 the Committee. That's an important point to Invictus, that at  
25 the close that these dollars advanced will actually be repaid

1 and there won't be any type of arguments in that regard. And  
2 I think that's the deal.

3 Your Honor, we appreciate the Court's help in getting  
4 there. Your Honor's words were not lost on the parties. And,  
5 you know, we appreciate the Debtor and the Committee's  
6 cooperation on this. We think all parties really came  
7 together. I think it's a positive sign moving forward. But  
8 we want to thank the Court for helping us get there.

9 THE COURT: Okay. All right. Let me just open the  
10 floor. Is there anybody else that wishes to be heard in  
11 relation to today's announcement by the parties?

12 All right. Then let me just make the comment --

13 MR. COOLEY: Your Honor?

14 THE COURT: Oh, go ahead.

15 MR. COOLEY: Sorry, Your Honor. This is Michael  
16 Cooley from Reed Smith. I represent various landlords in the  
17 case, together with --

18 THE COURT: And why don't you --

19 MR. COOLEY: -- Ms. Heilman.

20 THE COURT: Sure, sure. Why don't you, because there  
21 hasn't been a formal appearance, why don't you tell us who it  
22 is that you're appearing on behalf of.

23 MR. COOLEY: Yes, Your Honor. This is Michael Cooley  
24 from Reed Smith appearing for what I think the Court has  
25 colloquially referred to as the Brixmor Landlords, which are

1 not all affiliated with Brixmor but that's the first name on  
2 the list and sort of the list that the Court has colloquially  
3 used in these proceedings.

4 And I just wanted to interject for a moment with a  
5 question, which was if the parties could clarify what was  
6 meant by occupancy costs that are being pulled out of the  
7 budget.

8 THE COURT: So let me just ask, were you here  
9 yesterday?

10 MR. COOLEY: Yes, Your Honor.

11 THE COURT: Okay. So we --

12 MR. COOLEY: I was here for portions of the hearing  
13 yesterday.

14 THE COURT: So we obviously spent a fair amount of  
15 time. Frankly, I think we had we had testimony that went over  
16 it a fair amount of time. Is there something about the  
17 testimony that you didn't understand?

18 MR. COOLEY: No, Your Honor, but I wasn't here for  
19 all of the hearing. I caught portions of it yesterday, I  
20 confess.

21 THE COURT: All right. Well, do you care to --

22 MR. LIPPMAN: Can I give one clarification?

23 THE COURT: -- address it?

24 MR. LIPPMAN: I'll respond, Your Honor.

25 It's not being pulled out of the budget. It's just being



1 pulled out of the draw request.

2 THE COURT: Right.

3 MR. COOLEY: Understood. Thank you.

4 THE COURT: So is there any other commentary you wish  
5 to provide? I'm not requiring it, but --

6 MR. LIPPMAN: You know, the Debtors --

7 MR. COOLEY: No, Your Honor.

8 THE COURT: Okay. All right.

9 MR. PROSTOK: Your Honor, the only other thing is I  
10 think it might be helpful if the Committee could acknowledge  
11 that they're not going to make an objection at the close with  
12 respect to this draw. I think that's the agreement, but I'd  
13 like to hear that on the record, if possible.

14 THE COURT: Understood. Let me just kind of close  
15 the loop on if there is anybody else wishing to be heard. So  
16 let me -- I see Mr. Stohner has got his hand raised.

17 MR. STOHNER: Your Honor, I just wanted to be sure I  
18 heard correctly. The agreement, as I understand it, it's the  
19 actual funds being advanced, the approximately \$7.5 million,  
20 that would be repaid at closing, and any request for fees or  
21 other costs would be deferred subject to subsequent resolution  
22 by agreement or by the Court. Did I understand that  
23 correctly?

24 MR. LIPPMAN: Yes.

25 THE COURT: Not to split hairs, but I'm just going to

1 step out a little bit for I think what I would hear from Mr.  
2 Prostok, and certainly Mr. Mintz if he was here. I think that  
3 the point is that, undisputedly, the amount that is actually  
4 advanced will be repaid at closing. And then with respect to  
5 anything else, it just doesn't deal with that at all, that  
6 those issues will come up at the hearing however they come up  
7 at the hearing, but it's the point of whatever is being  
8 advanced under the current draw request will unquestionably in  
9 fact be paid at closing, period, end of sentence.

10 MR. PROSTOK: Correct, Your Honor.

11 MR. LIPPMAN: Correct, Your Honor.

12 THE COURT: Does that help?

13 MR. STOHNER: That does clarify, Your Honor. Thank  
14 you.

15 THE COURT: Okay.

16 MR. WEISENBERG: Your Honor, if I may. This is Brent  
17 Weisenberg on behalf of the Official Committee.

18 You said what I couldn't have done as well as you did, and  
19 so I thought I would take up the opportunity to take Mr.  
20 Prostok's invitation to confirm the Committee's agreement,  
21 which, again, is, as you accurately stated, the Committee will  
22 not oppose the repayment of the actual dollars lent pursuant  
23 to this draw, with all other rights reserved as to fees and  
24 any other amounts due.

25 THE COURT: Does that accurately get you where you

1 need, Mr. Prostok?

2 MR. PROSTOK: That's our understanding, Your Honor.

3 THE COURT: Okay. All right. So Mr. Prostok has  
4 confirmed that that's -- everybody is on the same page.

5 Any other comments or questions?

6 All right. Then let me tell you all that I do appreciate  
7 getting this sorted out. I think it's very important for --  
8 we're very close, it appears. And of course, I'm not -- I'm  
9 leaving for Thursday whatever is going to happen on Thursday,  
10 and I'm not trying to tell people one way or the other what  
11 I'm hoping to see on Thursday, because, frankly, I haven't  
12 reviewed everything that's come in on that. But I do think  
13 that from the standpoint of just interim stability and  
14 preserving value for all of the parties concerned, that this  
15 was important.

16 So, putting aside all of the contentiousness that we had  
17 leading up to yesterday and what have you, I very much  
18 appreciate the parties and counsel working to just deal with  
19 this. Like I said, irrespective of the merits. Whether it  
20 conformed with the agreement or didn't conform with the  
21 agreement or it fit the order or it didn't fit the order or  
22 something's been violated or hasn't been violated, all those  
23 things, I think it was really important from a practical  
24 standpoint to just figure out, like I said, a path forward on  
25 stability so that we can get to the sales process and see

1 where we're at at the point of the sales process, which is --  
2 our hearing is, in fact, Thursday, --

3 MR. PROSTOK: Thursday.

4 THE COURT: -- correct?

5 MR. LIPPMAN: Correct, Your Honor.

6 THE COURT: All right. So, again, I appreciate you  
7 all getting that done.

8 If I could just ask you all -- you may already be working  
9 on it -- just maybe put together some sort of a simple order.  
10 I don't care if it has some of the buzz words that's similar  
11 to a settlement-type agreement where nobody's acknowledging  
12 right or wrong or whatever. You know what I mean? But just  
13 that the parties agree and stipulate to the following, to just  
14 resolve the issue and avoid the dispute. Like I said, kind of  
15 almost like settlement language. If you all want to put  
16 something together on that front so that we can memorialize  
17 what's been done, I would appreciate that.

18 MR. LIPPMAN: I'll be happy to do so, Your Honor.

19 THE COURT: And then I'll get that entered.

20 Just because you all are here and we have a number of  
21 folks on the line -- and I certainly don't want to put  
22 somebody in the position of stepping out prematurely if  
23 they're not ready to -- but is there anything at all that --  
24 any sense of how things are looking for Thursday in terms of  
25 -- we're booked for the afternoon. Are things looking like we

1 might actually get there by the afternoon, or is that just a  
2 question mark at this point?

3 What I'm trying to do is figure out from a staffing  
4 standpoint if I need to be thinking about basically looking at  
5 Friday as a possible overflow date.

6 MR. LIPPMAN: Your Honor, we're going to have a lot  
7 of objections filed, because a lot of people just had  
8 questions of reservation of rights. A lot of it is, we  
9 believe, could probably fall into the category of getting the  
10 language to address parties' concerns.

11 Without getting too far ahead or too detailed at this  
12 time, there will be other issues the Court is going to have to  
13 weigh.

14 We're hopeful we'll be able to finish Thursday evening.  
15 It's important -- everything has been baked into this with the  
16 contemplation of a Friday closing. And so we will run into  
17 some issues we'll have to address if we're not in a position  
18 to close on Friday.

19 THE COURT: All right. And just give me a -- well,  
20 let me just say, that was pretty generic, and I appreciate it.  
21 It tells me a lot of what I need to know. Again, not trying  
22 to put people to the paces of disclosing things prematurely,  
23 because certainly that's not my objective, but is there  
24 anybody that wishes to respond at all to the report that Mr.  
25 Lippman has provided?

1 MR. PROSTOK: Your Honor, --

2 MR. WEISENBERG: Your Honor, if I may. This is Brent  
3 Weisenberg on behalf of the Committee again.

4 To my knowledge, there has been no objection to the sale  
5 itself. Parties in interest have objected or expressed  
6 concerns about seeing the relevant agreement or about  
7 disposition of the proceeds, but again, as far as the  
8 Committee is concerned, no party in interest is opposing the  
9 actual sale to Hilco.

10 THE COURT: Got it. Okay. And let me just -- I know  
11 there's been a number of stipulations on extending deadlines  
12 and what have you that have come down the pike. And, quite  
13 frankly, I didn't really pay attention to those, I just  
14 figured you all are doing what you need to do, and I wanted to  
15 help facilitate that.

16 But just for my own sanity, generally speaking, what does  
17 the landscape look like in terms of these extended objection  
18 deadlines? Is it Wednesday at 5:00? Is it Wednesday at 10:00  
19 p.m.? I'm just trying to figure out, you know, --

20 MR. PROSTOK: We filed our response, Your Honor,  
21 Sunday, which was our extended deadline.

22 MR. LIPPMAN: Yeah. Most of the extensions went  
23 through yesterday, if I may recall. There might have been a  
24 few that could have gone through today. Honestly, I haven't  
25 been closely monitoring it. So that's why you're starting to

1 see reservation of rights and comments being filed, because  
2 the deadlines for those existing stipulations have ran for  
3 most of them.

4 I remain optimistic. For most of those parties, I think  
5 it's a language issue ultimately that it comes down to.

6 THE COURT: Okay. All right. Well, that's helpful.  
7 Again, just part of what I was asking, the reason I'm asking  
8 is just trying to gauge from a stamina standpoint being  
9 prepared to know how much I need to be ready to be reviewing  
10 stuff at the last second. So that's helpful.

11 Mr. Stohner? Oh, there you go. I know you had a hand  
12 raised earlier. It looks like maybe that was an old one and  
13 it's just gone away. Unless you had something. Well, okay,  
14 there's a new one. All right. Go ahead. I think you might  
15 be on mute. So, we can see your lips moving but we can't hear  
16 you.

17 MR. STOHNER: I apologize, Your Honor.

18 In follow-up to Mr. Weisenberg's comment, it's my sense  
19 that what has been filed today is there seems to be no  
20 objection to the sale. My sense, and I may be missing some  
21 things that could come up, is whether there is any issue  
22 regarding the holding of all proceeds. Obviously, this new  
23 funding has already been dealt with today, and that's  
24 understandable. But the only other issue, which I don't think  
25 one is on the table, but is if there is any request that there

1 be any other distribution of proceeds now versus the Court  
2 determining that with all parties reserving rights relative to  
3 that. So I'd just make that point of clarification as a  
4 follow-up to Mr. Weisenberg.

5 THE COURT: Okay. Well, you've triggered now a hand-  
6 raise from Mr. Riedel, so let me hear from him as well.

7 MR. RIEDEL: Your Honor, I'll also follow up on Mr.  
8 Weisenberg, but to a different point. One of our concerns is  
9 we haven't seen the sale agreement and we haven't seen a  
10 proposed order. So just in the interest of trying to move  
11 things along, if we can see the actual agreement and any  
12 proposed order in advance, that would be helpful and expedite  
13 and I think streamline the hearing.

14 THE COURT: Perfect. Okay. I appreciate the  
15 comment.

16 And not to put you on the hot seat here, Mr. Lippman, but  
17 do you have a sense of when those might be filed so that it's  
18 being pushed out to folks?

19 MR. LIPPMAN: I may get shot by my team for saying  
20 this. Hopefully, the intent is today.

21 THE COURT: Okay.

22 MR. LIPPMAN: I know there were calls and exchanges  
23 into late last night with Hilco trying to finalize the final  
24 details. I'm not aware of anything that should delay it much  
25 longer. But we understand the importance of getting there,



1 and we're -- and it's our intent to get it on file as soon as  
2 we can. Obviously, I may get shot from my team.

3 THE COURT: I mean, that's fair.

4 MR. LIPPMAN: If I'm not getting (garbled) to my  
5 skis, but we understand the importance.

6 THE COURT: Okay. Yes. And let me state the  
7 obvious, which I'm sure you would appreciate, too, which is if  
8 we have a situation where folks are having a little bit of a  
9 challenge finalizing Schedule 6.15 of the APA, let's not make  
10 that be the hang-up, if we have to put a slip sheet in there  
11 saying "Still being finalized" or something. I think probably  
12 it's more important to get the substance out to folks sooner  
13 rather than later, even if there's a schedule here or there  
14 that needs to be supplemented at the end of the day or  
15 whatever, even if it's pretty last second.

16 MR. LIPPMAN: Understood. And just to make sure the  
17 record is clear, the delay is not because of anyone not giving  
18 attention, acting in bad faith, or there's a big issue that  
19 I'm aware of. It's just a lot of schedules, issues that have  
20 to be finalized. There's nothing that I can report to the  
21 Court or even suggest to the Court is because parties have  
22 been not giving it the due attention it needs.

23 THE COURT: Okay. All right. Well, then I think  
24 that will wrap things up for today. I appreciate the report.  
25 And like I said, that gives me a little bit of sense on timing

1 and what we're looking at so that we can make sure that we're  
2 committing the appropriate level of resources.

3 MR. PROSTOK: And Your Honor, if it's acceptable, if  
4 things change or -- would it be possible to reach out to the  
5 Court and give you a heads up as we get closer to the hearing?

6 THE COURT: Certainly. Certainly.

7 MR. PROSTOK: Okay. Thank you.

8 THE COURT: Yes. If you'll just communicate. Do it  
9 on a collective basis --

10 MR. PROSTOK: Sure.

11 THE COURT: -- with all the key folks to my  
12 courtroom deputy. But certainly if there's -- one way or the  
13 other, if it looks like, from a timing standpoint in  
14 particular, we're either going to need a lot more time than we  
15 thought or things may be really coming together, certainly  
16 we'd appreciate that, because then we, like I said, can  
17 appropriately try to orchestrate things on our end to make  
18 sure that the staffing is in place to accommodate those needs  
19 or to potentially, if we have other things bubbling up that we  
20 might need Friday for, for example, that we've got that  
21 available for the other matters. Okay?

22 MR. PROSTOK: Certainly, Your Honor.

23 THE COURT: All right. Well, very good.

24 MR. PROSTOK: Thank you.

25 THE COURT: Let me again just thank you all for your

1 efforts. I really do appreciate it, and I do think it is very  
2 important, like I said, for the stability of the case as we  
3 appear to be potentially getting to a point of resolution,  
4 without making any judgment with respect to that yet. But  
5 just, again, we appear to be at a pretty critical juncture, so  
6 I appreciate the efforts.

7 MR. PROSTOK: Thank you, Your Honor.

8 MR. LIPPMAN: Thank you, Your Honor.

9 THE COURT: All right. That will conclude the  
10 matters on this morning's docket. The Court will be in  
11 recess.

12 THE CLERK: All rise.

13 (Conclusion of proceedings at 9:23 a.m.)

14 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**04/26/2023**

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25 \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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Date

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PROCEEDINGS

4

WITNESSES

-none-

EXHIBITS

-none-

RULINGS

Invictus Global Management, LLC's Preliminary Response to Debtors' Emergency Motion for Entry of an Order (I) Enforcing Obligation to Lend Under Final DIP Order; (II) Compelling Turnover of Property of the Estate; and (III) Granting Related Relief (936)

END OF PROCEEDINGS

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